

## CHAPTER 1

# THE NEEDS OF LOW-INCOME AND VULNERABLE CALIFORNIANS FOR CIVIL LEGAL AID

The high cost of private legal representation puts legal help out of reach of low-income families when they face critical legal issues such as elder abuse, adoption or guardianship, domestic violence, and lack of access to health care. At the same time, continuing lack of adequate funding makes it impossible for legal aid providers to handle most of the legal needs of their client communities. The California Commission on Access to Justice estimated that, as of the year 2000, only 28 percent of the legal needs of this population were served by legal aid.<sup>1</sup>

The strategic plans of both the Judicial Council and the State Bar place a high priority on the goal of expanding access to justice. Recent bench-bar collaborative efforts provide important support to legal aid providers across the state. Meanwhile, the state court system provides critical leadership and helps implement efforts to increase access to the courts and improve services for self-represented litigants—ultimately enhancing trust and confidence in the judicial system.

Over the past several years, a nationwide effort has been building to expand access to the judicial system using several strategies. These include providing more self-help and limited legal assistance to low-income clients, incorporating new electronic technologies into court processes, and developing collaborative projects with other legal aid and social service assistance providers.



<sup>1</sup> California Commission on Access to Justice, *Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (2002), pp. 3 and 30.

*Although he had received a Cross of Gallantry and a Presidential Citation, Wally's time fighting in the jungles of Vietnam had left him with serious psychological injuries. The Veterans' Administration had repeatedly denied his requests for assistance. With the help of a legal aid attorney, Wally was able to prove that the Administration had made a mistake. The back payments and benefits he now receives have allowed him to buy a home for his family, help send his son to college, and get the medical and psychiatric services he needs.*

The Equal Access Fund is used to support all these types of efforts. The funding it provides has helped California to become a recognized leader in creating courts that are more accessible to those who need them, and providing representation for those who cannot afford an attorney.

## 1. Establishment of the Equal Access Fund

The California Legislature established the Equal Access Fund as part of the Budget Act of 1999, joining 37 other states already providing state funding for civil legal aid. These state funding mechanisms are designed to make progress toward the goal of ensuring that the most vulnerable members of society have access to civil legal assistance if they face critical legal issues.

The resources provided through the Equal Access Fund are an important supplement to the other public and private funds that are available in California for the nearly one hundred local nonprofit legal aid providers attempting to meet the civil legal needs of those who cannot afford an attorney. Although the total funding available falls far short of the need, many more low-income Californians would be going without legal assistance were it not for the Equal Access Fund.

The Equal Access Fund was established under the supervision of the California Judicial Council “in order to improve equal access and the fair administration of justice.” It has been included in the Governor’s proposed budget every year since its establishment in 1999. The fund has received \$10 million in each Budget Act from 1999 through 2004.<sup>2</sup> The Judicial Council has provided ongoing oversight to this fund since its inception, approving distribution of grants, ensuring quality-control procedures are in place, and appointing one-third of the members of the State Bar’s Legal Services Trust Fund Commission that directly administers the fund.

In establishing the fund, the Legislature took advantage of an existing statutory distribution system for civil legal aid for low-income people: the Legal Services Trust Fund Program. This statutory allocation mechanism ensures that the Equal Access Fund is distributed

<sup>2</sup> The January 2001 proposed budget included a 50 percent increase in the Fund that was subsequently reduced back to the \$10 million level in the final budget because of the economic downturn.

throughout the state in a fair, efficient manner, using a well-functioning system and avoiding duplication of administration. By statute, the Equal Access Fund is allocated as follows:

- *Ninety percent to nonprofit legal aid providers.* Ninety percent of the funds are distributed to organizations providing free civil legal aid to low-income people, according to a formula set forth in California’s Interest on Lawyer Trust Accounts (IOLTA) statute;
- *Ten percent to court/legal aid self-help centers.* Ten percent of the funds are dedicated to partnership grants to nonprofit legal aid providers for “joint projects of courts and legal aid providers to make legal assistance available to pro per litigants.”

## 2. Types of Help Needed by Legal Aid Clients and Impact of Legal Aid on Other Government Services

Legal problems faced by California’s low-income community involve very basic issues of housing, family, safety, and employment—problems often caused by or exacerbated by the family’s lack of resources. Social science data is scant concerning how often a family in poverty may need a legal advocate to achieve basic goals that others take for granted, but legal aid offices receive daily requests for critical assistance, such as:

- Victims of domestic violence who need legal assistance to separate themselves from abusive partners;
- Families that need a legal advocate to establish guardianships, finalize adoptions, or address foster care improprieties;
- Children with disabilities and special education needs who require help obtaining care and accommodations;
- Families that need assistance dealing with child support, child custody, or other divorce-related issues;
- Veterans who need legal assistance to obtain services and resources they have earned;

*With their frequently homeless mother suffering from AIDS and cancer, Jessica, Lisa, and Kara often had to fend for themselves, finding food and shelter wherever they could. Legal aid advocates obtained guardianships for these teenage sisters to give them a stable home. Today they attend school and get the health care they need, while still being able to spend time with their mother in her hospice program. Jessica says, “I finally feel happy to come home every day.”*

- Elderly persons who need legal help to escape abuse or neglect by a family member or caregiver, or to undo an illegal foreclosure resulting from home improvement fraud or identity theft;
- Families facing a medical emergency who cannot obtain health care;
- Individuals transitioning from welfare to work who need legal assistance to reinstate a driver's license needed for employment, or to ensure access to child care that enables them to work;
- Immigrants, who are particularly vulnerable and may need assistance to address unfair and deceptive business practices such as fraud in the purchase and sale of a used automobile, deceptive insurance sales, predatory fringe lending, or illegal debt collection practices; and
- Families in unsafe housing who need advocacy to obtain critical repairs.

### 3. Legal Aid Delivery System

California's legal aid delivery system is an established network of locally based organizations and support centers working together to serve the civil legal needs of low-income people in every county. Approximately one hundred local nonprofit legal aid providers and statewide support centers, including staffed legal aid organizations, pro bono projects that use volunteer lawyers to provide services, and self-help centers, form the core of this delivery system.<sup>3</sup> These providers coordinate their efforts to avoid duplication and to improve efficiency and effectiveness. These core legal aid providers are the recipients of the Equal Access Fund.

Providers receiving Equal Access Fund grants work closely with other nonprofit organizations, the courts, and state and local agencies that address legal issues confronting California's low-income population. Equal Access Fund grants to legal aid support centers help them provide technical expertise, training, and coordination to address gaps in service. Appendix F, Organizations Working to Support And Coordinate the Statewide System of Delivering Legal Aid to the Poor,

<sup>3</sup> The number of legal aid providers receiving money from the Equal Access Fund has varied slightly over the last five years as some smaller organizations have merged and other organizations have only recently established eligibility.

describes the work of those statewide organizations that support, organize, and collaborate with this network of local service providers. The participants in this statewide civil justice community adopted the following vision statement:

*California shall have an inclusive, client-centered justice community of clients; legal services programs; bench and bar; academia; community groups; and government, business, and civic leaders sharing responsibility for effectively meeting the essential legal needs of the poor—no matter where they live or what language they speak—and for removing barriers to achieving self-sufficiency and true access to justice.*

Vision of the State Justice Community for the Delivery of Legal Services, adopted May 2002, Statewide Stakeholders Conference.

#### 4. Legal Aid for Low-Income People—A Nationally Coordinated Effort

The system for providing legal aid to low-income Californians is part of a nationwide effort to address the legal needs of those who cannot afford an attorney. Several national organizations are devoted, in whole or in part, to achieving equal access to justice, and the components of California's legal aid delivery system work closely with these national organizations:

- The *Legal Services Corporation* is a federal nonprofit agency that oversees the congressionally appropriated funds for nonprofit legal aid providers.
- The *National Legal Aid and Defender Association* serves as a coordinator for the country's civil as well as public defender legal aid providers.
- The *American Bar Association* supports legal aid for low-income people in many ways, particularly through its Standing Committee on Legal Aid and Indigent Defendants.

Together these organizations provide a public-private matrix of service provision and rights protection on behalf of low-income individuals and families across the country.

Since the federal contribution to legal aid providers decreased dramatically in the mid 1990's, states have taken more responsibility for funding and coordinating the legal aid available to people within their borders. As states work to reduce gaps in service, the coordination afforded by the efforts of national programs across state lines is critical to maintaining effective legal aid services. The coordination efforts allow for the dissemination of good practices developed elsewhere, and for the strengthening of a national network of courts and legal aid providers working together to achieve equal access to justice.

*Maria and Ricardo live with their three children in a rural town. Four years after they purchased their small home, their mortgage payments suddenly increased substantially, jeopardizing their ability to pay. Maria determined that the mortgage company had placed unnecessary flood insurance on her property, but was unable to get the charge removed. With the help of hotline legal advice, however, she learned she had a right to discontinue the coverage, and learned the proper procedures to do so. With the hotline's help, Maria not only got the unnecessary coverage removed, she also obtained a refund of her past payments for the insurance.*

## 5. Providing a Range of Delivery Methods and a Coordinated Network of Services

In order to provide legal aid in California that is responsive to the needs of the indigent family or individual, while being as efficient as possible, the courts, legal aid providers, and other components of the state's legal aid delivery system have developed a range of services appropriate to different levels of need. A statewide framework is now in place for providing legal aid to the low-income community that seeks to address client need in a comprehensive manner. While the system cannot meet existing demand, the network of services helps ensure the most efficient use of the resources that are available. Together with volunteers at all levels of professional training, services are provided by lawyers, lawyer-supervised paralegals, and other nonlawyer advocates.

*Community legal education and other services.* Nonprofit legal aid providers offer a wide range of assistance to their client communities in addition to direct legal representation and advice. These services include legal education designed to help members of the community understand law-related issues they face and avoid litigation wherever possible. They also include support for other nonprofits focused on community economic development, domestic violence, and other community issues, and collaborative efforts with other agencies in their service area dedicated to serving the needs of the low-income community.

*Self-help assistance.* Some types of legal problems faced by families can be handled without formal representation if the families are provided with self-help legal information and support. Part of this support has been provided by family law facilitators that were established in the trial courts in every county beginning in 1997. In addition, a number of court-based self-help centers and family law information centers are now located in many courts throughout the state. These family law facilitators alone serve over 450,000 individuals each year through workshops and one-on-one assistance, supplemented by videotapes and written materials. One of their key functions is to refer litigants to appropriate legal and community services, particularly if self-representation is not a good alternative for that person; given the scarcity of resources, however, appropriate referrals are not always available, particularly in rural areas.<sup>4</sup>

Some self-help centers are run by the courts themselves, while others are offered by legal aid providers working in conjunction with their local superior court. These types of collaborative projects have been expanded greatly as a result of partnership grants provided through the Equal Access Fund. Legal aid providers and pro bono projects also offer self-help assistance through clinics and hotlines that individuals can call to get information or brief advice to help them deal with a variety of legal concerns, particularly in rural areas that lack direct access to a legal aid office.

*Limited scope legal assistance.* Even those who can represent themselves frequently need the help of a lawyer for part of their case. Legal aid attorneys and pro bono lawyers offer limited scope assistance, sometimes called “unbundling” or “discrete task representation,” giving advice at various stages, helping with a court appearance, or drafting documents. For example, legal aid clinic and hotline staff can write letters or make phone calls for clients, which often help resolve disputes at an early stage. This targeted assistance to individuals who would otherwise not have any legal help makes efficient use of the limited attorney resources available to low-income litigants. Court-based self-help centers often have information about the availability of such limited scope legal help, and lawyer referral services are beginning to offer limited scope legal panels.

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Rosario was able to start a cleaning cooperative with the help of a community development organization (CDO) and legal aid advocates. These advocates also assisted the CDO with the legal work needed to acquire and rehabilitate a dilapidated apartment building. Rosario moved into an apartment and joined in the CDO's Individual Development Account (IDA) program, which allows tenants to earmark part of their rent payment for a savings account that can later be used for buying a home, going to school, or starting a business.

After a year, Rosario had saved enough to purchase a home. With the help of the legal aid advocates this purchase was finalized, and Rosario and her new husband moved into their first home.

<sup>4</sup> See *Child Poverty in Rural America* (Washington, DC: Population Reference Bureau, 2004); see also *The State of the Great Central Valley of California* (Modesto, CA: Great Valley Center, 2004); see also *Poverty amid Prosperity: Immigration and the Changing Face of Rural California* (Washington, DC: Urban Institute Press, 1997).

*Representation.* Other matters require the ongoing involvement of an attorney because the case or other matter involves complex legal issues, the opposing party is represented by an attorney, or the individual is not a good candidate for self-representation for other reasons. This is the model most used in private practice, but given the lack of resources, is not available for all low-income people or groups of low-income people facing critical legal problems. The level of representation varies greatly and can involve negotiation, appearances before administrative bodies, court hearings, discovery, trials, and appeals.

See Appendix B, Equal Access Fund Projects, and Appendix C, Partnership Projects, for brief descriptions of the wide range of services provided by legal aid providers with their Equal Access Fund grants.

*Lily lived in fear for her life. Married to a man who was physically abusive, she was dependent on him for legal residency. Her fear of deportation made her powerless against her husband's violence.*

*On the advice of legal aid advocates, Lily applied for U.S. residency under the Violence Against Women Act. Advocates also helped her get a restraining order to keep her abusive husband away, and assisted her in filing for divorce. Lily now lives secure in the knowledge that she cannot be deported and that she need never suffer physical abuse again.*

## 6. Role of Volunteer (“Pro Bono”) Attorneys

The amount of representation and other legal assistance that can be provided to low-income clients depends in part on the commitment of local attorneys to do volunteer work. Most nonprofit legal aid providers use volunteer attorneys in some capacity. Most commonly, staff members interview potential clients and link them up with an appropriate volunteer lawyer, sometimes co-counseling with that lawyer. The legal aid provider offers support and training for the volunteers, as well as quality control and follow-up to ensure clients receive the assistance they need. This greatly expands the amount of legal help the providers can offer; as a result, while they clearly cannot entirely fill the gap in funding, pro bono attorneys represent a significant additional resource to help low-income clients.

Pro bono is a critical supplement to the work done by legal aid providers, although it is important to recognize that pro bono assistance cannot exist in a vacuum. Its success depends on the key roles played by the staff of legal aid providers and independent pro bono programs to coordinate, train, and support those volunteers.



## 7. Tailoring Solutions to Meet the Need

Self-help and other limited assistance with legal problems provide a greater number of individuals access to the legal system by enabling them to resolve their legal issues themselves—to the extent they are able to do so. Such services have the added benefit of freeing up other resources to provide more in-depth representation if that is needed. Through the Partnership Grant Program, the Equal Access Fund is being used to advance this trend significantly by helping determine what kind of self-help assistance works best and for whom. While this is an important advance, these self-help services are only able to meet a portion of the need. Many people are simply not able to represent themselves due to the complexity of their legal problem or their inability to understand or explain their situation to the court. It is critical that legal aid providers continue to have lawyers to represent those for whom self-help and limited scope services are not adequate.

## 8. Benefits of Legal Aid to Our Communities

Legal aid providers are having an impact far beyond what is immediately evident, reducing the need for many state services and increasing public trust and confidence in the court system and other branches of government.

Legal aid helps families escape domestic violence, avoid homelessness, obtain needed mental health care, access basic support services, and resolve many other problems that threaten the well-being of families and their children. Preventing homelessness saves taxpayer dollars and improves the well-being of the community. Ensuring individuals receive preventive medical care to which they are entitled lowers costs to the health care system by treating problems before they become expensive emergencies. Supporting victims of domestic violence and elder abuse can prevent a pattern of escalating abuse, save medical and social services costs, and help stabilize lives. Law enforcement personnel and district attorneys across the state have been working closely with legal aid providers to reduce domestic violence and other crimes.



After working for many years, Miriam was injured and became unable to work. Initially her medical expenses were covered by an HMO policy through her husband, Bob. Although Bob and Miriam had been married many years, they had also been separated for a long time when Bob suddenly terminated Miriam's coverage.

Since she had no money of her own to pay for medical insurance, Miriam contacted a legal aid provider, who arranged for pro bono representation. The volunteer attorney was able to obtain a legal separation, the terms of which include HMO coverage and monthly alimony for Miriam.

Legal advocacy also plays a key role in helping to reduce or avoid poverty-related family dysfunction and child abuse and neglect, and in helping special needs children and their families to rely less on public institutions. Supporting community economic development and welfare-to-work efforts helps indigent people secure stable employment and attain self-sufficiency. Accessible legal assistance is therefore critical to the maintenance and improvement of civil society.

## 9. Those Who Remain Unserved

Notwithstanding the Equal Access Fund, which is a vital source of state funding, California's low-income population continues to have a high level of unmet legal need. As stated before, it is estimated that in the year 2000 only 28 percent of the legal needs of low-income Californians were served by legal aid. In that year, 6.4 million Californians lived in poverty, including nearly one in five children.<sup>5</sup> The rate of poverty in California in 2000 was 12.9 percent, 1.6 percent higher than the national average. Since 1989 the poverty rate in California has consistently exceeded the national average, sometimes by as much as 3 percent, thereby posing significant challenges for the state's network of legal aid providers beyond those faced by many other states.<sup>6</sup> The situation for children is even worse since California alone accounts for the net national increase of 800,000 children in poverty since the late 1980's.<sup>7</sup>

Due to the lack of adequate resources, local providers are forced to turn away many needy clients who do not fit within their established priorities. For example, many legal aid providers are unable to provide assistance with family law. If a provider offers services to victims of domestic violence, it may require clients to show recent violence in order to be eligible for services. Otherwise, it must refer them to another self-help service in the community, if one exists. There are simply many more people who need help than can currently be served

<sup>5</sup> See California Commission on Access to Justice, *Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (2002).

<sup>6</sup> California Budget Project Report, September 27, 2001.

<http://www.cbp.org/2001/qh010927.pdf>. By 2002, the poverty rate in California had risen to 13.1 percent, still a full percentage point higher than the national average. California Budget Project Report, January 2004.

<http://www.cbp.org/2004/2004chartbook.pdf>.

<sup>7</sup> See National Center for Children in Poverty, *The Changing Face of Child Poverty in California* (August, 2002).

by the nonprofit legal aid provider community, leaving almost three-quarters of the need unmet.<sup>8</sup>

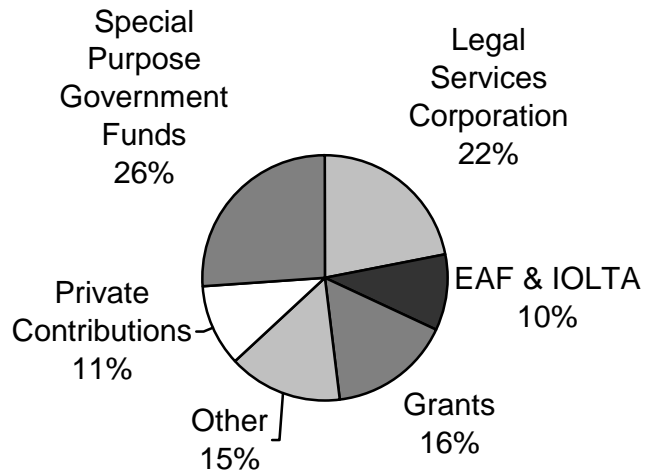
## 10. Resources Available for Civil Legal Aid

In addition to the Equal Access Fund, public sources of funding for civil legal aid for low-income Californians include the federal Legal Services Corporation which supports nonprofit legal aid providers throughout the country; funding derived from the interest on lawyer trust accounts, administered by the Legal Services Trust Fund Program of the State Bar of California (see Appendix F, Organizations Working to Support And Coordinate the Statewide System of Delivering Legal Aid to the Poor); and special purpose government funds, primarily from the federal government. Examples of the latter include Older American Act funding for senior services, Department of Justice funding through the Violence Against Women Act, the Ryan White Comprehensive AIDS Resources Emergency, and protection and advocacy funding for services to the developmentally disabled. Additional private resources for legal aid providers come from individual attorneys, law firms, private foundations, corporations, special events, and other fundraising activities (see Chart 1).

<sup>8</sup> California Commission on Access to Justice, *Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (2002), p. 7.

Chart 1

*Funding for Legal Services in California:  
Source and Percent for 2003*



Total funding from all sources = \$181,600,000

All sources of funding for legal aid combined provided only \$150 million in 2000, the year following establishment of the Equal Access Fund. This allowed legal aid providers in the State to address only about 28 percent of the legal needs of the 6.4 million indigent Californians who were eligible for help in 2000.<sup>9</sup> By the year 2003, the total funding available for civil legal aid for low-income people in California was \$181,600,000, a 15 percent increase when adjusted for inflation.

Many factors contribute to the increase. Because California's share of the eligible low-income population, compared with other states, increased between the 1990 and the 2000 census, a larger share of federal legal aid funding comes to the state. Legal aid providers have become better at raising funds from private individuals and getting grants from government agencies and private foundations. While this

<sup>9</sup>California Commission on Access to Justice, *Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (2002), pp. 3 and 30.

higher level of funding is extremely valuable, the total funding available is still far short of the need.

## 11. Additional Funding Still Needed

The *Path to Equal Justice* report released by the California Commission on Access to Justice estimated that the total resources needed to provide full access to justice for all low-income Californians in 2000 would have been approximately \$533 million per year. Since the state's combined public and private investment in legal aid was about \$150 million that year, the resulting “access gap” was approximately \$383 million. By 2003, increases in funding had reduced the funding gap to approximately \$352 million. While the goal of full access still seems elusive, even this incremental progress represents valuable additional services for low-income Californians.

Even with the creation of the Equal Access Fund in California in 1999, the federal and state governments are shouldering a smaller share of the funding responsibility for legal aid than at any time in the past three decades.<sup>10</sup> For the past decade, the federal government has been shifting to the states more and more responsibility for providing social services, including legal aid to low-income people. This presents a challenge to the state—both to maintain a consistent level of funding, or possibly to make inroads against the funding gap, and also to maintain the highest possible level of federal funding committed to legal aid for low-income Californians.

*Tien and her children lived in constant fear. Tien's husband had been convicted of spousal abuse, armed robbery, and drug possession and was constantly threatening her with violence. A legal aid attorney helped Tien petition for a change of name, allowing her to relocate and get a fresh start. Now, Tien and her young children are free from violence and abuse.*

## 12. Progress in Achieving Access to Justice

The Equal Access Fund makes an important contribution to meeting the unmet needs of low-income Californians. The courts and nonprofit legal aid providers working together have made important progress in the past few years, and the Equal Access Fund has made a real difference in meeting the unmet legal needs of low-income and vulnerable Californians. The fund makes a difference not only because of the financial support and stability that it gives to providers serving the legal needs of California's low-income population, but also because of the opportunity it provides to facilitate collaborative efforts among legal aid providers, the private bar, the California courts, community organizations, and local governments.

<sup>10</sup> California Commission on Access to Justice, *Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (2002), pp. 2 and 18.

The fund has helped California's legal aid providers become more efficient and creative in the provision of legal aid. Fund-supported projects have developed new and innovative ways to provide quality services to greater numbers of low-income Californians. The effective use of technology and improved coordination have increased the efficiency of the legal aid delivery system. Finally, periodic self-evaluation ensures that programs remain responsive to the needs of the clients they serve.

The innovations created with the Equal Access Funds, including partnerships between legal aid providers and the courts to identify and address barriers and serve people in the most effective manner possible, have improved access to justice for low-income Californians. Nonetheless, despite the great strides and accomplishments described in this report, the establishment of the Equal Access Fund, other increased resources devoted to civil legal aid, and the more efficient use of those resources, the need for services remains far from satisfied.